

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CATHERINE MCKOY, MARKUS FRAZIER, and
LYNN CHADWICK, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE TRUMP CORPORATION, DONALD J. TRUMP,
in his personal capacity, DONALD TRUMP, JR., ERIC
TRUMP, and IVANKA TRUMP,

Defendants.

No. 1:18-cv-09936-LGS-SLC

**DECLARATION OF MATTHEW D. BRINCKERHOFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

MATTHEW D. BRINCKERHOFF, declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. My name is Matthew D. Brinckerhoff. I am a partner in the firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, counsel for Plaintiffs Catherine McKoy, Markus Frazier, and Lynn Chadwick ("Plaintiffs"). I submit this declaration in support of Plaintiffs' Motion for Class Certification.

2. Annexed as **Exhibit 1** is a true and accurate copy of excerpts from the transcript of the August 18, 2022 deposition of David Merriman, who testified on behalf of non-party ACN Opportunity, LLC ("ACN") as its designee pursuant to Fed. R. Civ. P. 30(b)(6).

3. Annexed as **Exhibit 2** is a true and accurate copy of a spreadsheet documenting ACN Independent Business Owner ("IBO") sign-ups from 2012 to 2016.

4. Annexed as **Exhibit 3** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Michael Gartenberg.

5. Annexed as **Exhibit 4** [reserved].
6. Annexed as **Exhibit 5** is a true and accurate copy of a February 6, 2006 Trump Organization memorandum from Cathy Glosser enclosing the February 6, 2006 Endorsement Agreement between Donald Trump and ACN.
7. Annexed as **Exhibit 6** is a true and accurate copy of a February 15, 2006 email from Robert Stevanovski at ACN.
8. Annexed as **Exhibit 7** is a true and accurate copy of the February 2008 Endorsement Agreement between Donald Trump and ACN.
9. Annexed as **Exhibit 8** is a true and accurate copy of the January 28, 2009 Appearance and Endorsement Agreement between Donald Trump and ACN.
10. Annexed as **Exhibit 9** is a true and accurate copy of the January 14, 2011 Appearance and Endorsement Agreement between Donald Trump and ACN.
11. Annexed as **Exhibit 10** is a true and accurate copy of the February 13, 2013 Appearance Agreement between Donald Trump and ACN.
12. Annexed as **Exhibit 11** is a true and accurate copy of an October 30, 2015 email from Rhona Graff at The Trump Organization attaching the Mutual Termination of Appearance Agreement executed by Donald Trump and ACN on June 20, 2015.
13. Annexed as **Exhibit 12** is a true and accurate copy of a November 17, 2008 email from Sheila Marcello at ACN attaching an ACN document titled, “24 HOUR GAME PLAN.”
14. Annexed as **Exhibit 13** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Stacie Bosley.

15. Annexed as **Exhibit 14** is a true and accurate copy of a December 11, 2012 email from Sheila Marcello at ACN and accompanying attachments, including ACN documents titled: “Road Map to LEXUS,” “IBO Getting Started Process,” and “Presenting the Opportunity.”

16. Annexed as **Exhibit 15** is a true and accurate copy of ACN Opportunity Disc, Version 4.0, June 2010.

17. Annexed as **Exhibit 16** is a true and accurate copy of excerpts of the August 2011 issue of *Success from Home* magazine.

18. Annexed as **Exhibit 17** is a true and accurate copy of ACN Opportunity Disc Version 5.3, December 2011.

19. Annexed as **Exhibit 18** is a true and accurate copy of ACN Opportunity Disc Version 5.5, May 2012.

20. Annexed as **Exhibit 19** is a true and accurate copy of ACN Opportunity Disc Version 5.6, June 2012.

21. Annexed as **Exhibit 20** is a true and accurate copy of ACN Opportunity Disc Version 6.1, September 2012.

22. Annexed as **Exhibit 21** is a true and accurate copy of ACN Opportunity Disc Version 7.0, January 2013.

23. Annexed as **Exhibit 22** is a true and accurate copy of ACN Opportunity Disc Version 9.2, June 2015.

24. Annexed as **Exhibit 23** is a true and accurate copy of excerpts of the November 18, 2022 Expert Report of Kevin Lane Keller.

25. Annexed as **Exhibit 24** is a true and accurate copy of an ACN promotional video featuring Donald Trump.


26. Annexed as **Exhibit 25** is [reserved].
27. Annexed as **Exhibit 26** is a true and accurate copy of an ACN promotional video featuring Donald Trump.
28. Annexed as **Exhibit 27** is a true and accurate copy of excerpts from the transcript of the October 11, 2022 deposition of Donald J. Trump.
29. Annexed as **Exhibit 28** is a true and accurate copy of ACN's 2012 Policies and Procedures.
30. Annexed as **Exhibit 29** is a true and accurate copy of an October 25, 2006 email from Robert Stevanovski at ACN.
31. Annexed as **Exhibit 30** is a true and accurate copy of excerpts of the September 2014 issue of *Success from Home* magazine.
32. Annexed as **Exhibit 31** is a true and accurate copy of excerpts of the August/September 2008 issue of *Success* magazine.
33. Annexed as **Exhibit 32** is a true and accurate copy of excerpts of the August 2010 issue of *Success from Home* magazine.
34. Annexed as **Exhibit 33** is a true and accurate copy of an internal ACN financial analysis titled "ACN Consolidated Summary."
35. Annexed as **Exhibit 34** is a true and accurate copy of a March 26, 2010 letter from Brian L. Davis of McColl Partners to ACN Chairman Robert Stevanovski enclosing a document titled "Confidential Information Memorandum," and excerpts of the same memorandum.
36. Annexed as **Exhibit 35** is a true and accurate copy of excerpts from the transcript of the August 23, 2022 deposition of Anne Archer Butcher.

37. Annexed as **Exhibit 36** is a true and accurate copy of the March 2009 episode of *The Celebrity Apprentice* featuring ACN.

38. Annexed as **Exhibit 37** is a true and accurate copy of the March 2011 episode of *The Celebrity Apprentice* featuring ACN

39. Documents produced by non-party ACN in this case include lengthy spreadsheets listing thousands of ACN Independent Business Owners (“IBOs”) at particular points in time and their ACN earnings, if any. One such spreadsheet is over 700 pages long and lists 65,535 IBOs and “raw data” detailing their earnings, if any. Given the length of the spreadsheet, it is not attached as an exhibit here. Plaintiffs can supplement the record and provide a copy of the complete spreadsheet containing the raw IBO enrollment data to the Court, if needed.

Dated: March 10, 2023



MATTHEW D. BRINCKERHOFF

EXHIBIT 34

March 26, 2010

Mr. Robert Stevanovski
Chairman
ACN, Inc.
1000 Progress Place
Concord, NC 28025

Dear Robert:

I have enclosed the final draft of the Confidential Information Memorandum for ACN, Inc., which we are prepared to send to prospective investors/acquirors. I ask that you and the appropriate executives of ACN review this document carefully to determine if it contains any false or misleading statements or omits any information that might be material to a prospective investor.

Once you have completed this review, I ask that you inform me promptly of any revisions that are necessary to correct any such statements or omissions; and if the information contained therein is true and not false or misleading and there are no omissions of material fact, I ask that you or an appropriate officer of ACN approve this draft on the attached copy of this letter and return it to me. Once we receive your approval, we will be in a position to send the Confidential Information Memorandum to prospective investors and begin our marketing efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Davis", with a stylized flourish at the end.

Brian L. Davis

We approve:

Robert Stevanovski

Enclosures

CONFIDENTIAL INFORMATION
MEMORANDUM



Confidential

McCOLL | PARTNERS
INVESTMENT BANKERS

AMERICAN COMMUNICATIONS NETWORK, INC.

CONFIDENTIAL INFORMATION
MEMORANDUM

McColl Partners, LLC (“McColl Partners”) has been engaged by American Communications Network, Inc. (“ACN” or the “Company”) as its exclusive agent and investment banker to assist in the proposed transaction.

By acceptance hereof, each recipient agrees that it will not copy, reproduce, or distribute to others this confidential information memorandum (the “Memorandum”) in whole or in part, at any time, without the prior written consent of ACN except as expressly permitted in the confidentiality agreement delivered by the recipient to McColl Partners and that it will keep permanently confidential all information contained herein not already public and will use the Memorandum only for the purpose set forth below.

The Memorandum has been prepared for the purpose of providing prospective partners with general financial and other information concerning ACN. The Memorandum is being furnished to gauge the recipient’s interest in partnering with ACN and does not constitute an offer to sell or a solicitation of offers to buy securities of the Company. All information presented in the Memorandum with respect to the existing business and historical operating results of ACN and estimates and projections as to future operations is based on material prepared by ACN and its management. Although the information contained herein is believed to be complete and accurate, ACN and McColl Partners expressly disclaim any and all liability for representations, express or implied, contained in, or for omissions from, the Memorandum. If and when authorized by ACN, prospective partners will be allowed to conduct a comprehensive due diligence review of ACN’s operations and financial condition, including discussions with senior management of ACN. Prospective partners will be required to rely only upon such review in making an investment decision regarding ACN.

ACN reserves the right to require the return of the Memorandum at any time. All inquiries and requests for additional information concerning ACN should be directed to:

Lorin J. DeMordaunt Phone: 704-333-0591 ldemordaunt@mccollpartners.com	Jamie A. Lewin Phone: 214-451-5202 jlewin@mccollpartners.com	Brian L. Davis Phone: 704-333-0136 bdavis@mccollpartners.com
Matthew P. Preece Phone: 704-731-7186 mpreece@mccollpartners.com	Jeremy A. Somers Phone: 704-731-8239 jasomers@mccollpartners.com	
Brian M. Kohn Phone: 704-731-8247 bkohn@mccollpartners.com	Chris S. McCrory Phone: 704-731-7204 cmccrory@mccollpartners.com	

McColl Partners, LLC
100 North Tryon Street, 54th Floor
Charlotte, North Carolina 28202
Telephone: (704) 333-0525
Fax: (704) 333-0118

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Growth Opportunities

ACN intends to re-launch the Company's full service portfolio in Finland, including local and long distance telephony, mobile services, and agency products. As ACN continues to sign additional agency contracts in Europe, Management anticipates strong penetration into existing European markets.

- **Expand Representative Base.** Management aggressively focuses on growing the Company's Representative base in an effort to drive revenue and remains committed to providing new incentives and initiatives to improve recruitment levels. As a result, ACN has grown its average recruiting level from approximately 20,000 new Representatives per quarter in 2007 to approximately 46,000 Representatives per quarter in 2009. Management attributes the Company's strong recruiting trends to (i) offering innovative, and desirable products and services, (ii) motivating an enthusiastic Representative base working to build downline networks, (iii) structuring a generous compensation plan, (iv) placing local executives to provide local training sessions, (v) offering international conventions, and (vi) incentivizing Representatives through monthly bonus programs and promotions. ACN has hired local sales executives to facilitate local training sessions with key Representatives and their respective downlines. The sales executives assist local Representatives in targeting potential customers in creditworthy areas and in educating Representatives on product functionality. Local sales executives have historically played a significant role in driving Representative growth. The Company also continually demonstrates a dedication to implementing strategic marketing initiatives. Most recently, ACN was featured on the television show "The Apprentice," hosted by Donald Trump, in March 2009. As a result, the Company realized its most successful recruiting month of 2009 in March, recruiting 15,384 new Representatives, or 16.4% of total new Representatives for the year. ACN also views further penetration of international markets as a key growth opportunity associated with expanding the Representative base. Specifically, Management intends to aggressively pursue further penetration in Asian and European markets.
- **Augment Product and Service Offering.** ACN remains committed to providing the highest-quality product and service offering in the industry, and the introduction of new products and services represents a significant growth opportunity for the Company. Management recognizes that new product launches are essential to energizing the Company's existing Representative base, attracting new recruits, and maintaining a fresh offering for customers. ACN maintains its focus on offering cutting-edge technologies in the video phone market. Accordingly, the Company will launch its next generation IRIS 4000 Video Phone, developed in collaboration with WorldGate Communications, Inc. (OTCBB:WGAT) ("WorldGate"), a pioneer in video phone technology, in July 2010. The IRIS 4000 Video Phone will provide customers with an even more advanced, dynamic product with significantly enhanced quality. Additionally, the Company consistently evaluates potential new products and services, and Management recently launched energy products on an agency basis in Europe. The Company is currently contemplating the addition of: (i) DSL